

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

**BIOPLUS SPECIALTY PHARMACY
SERVICES, INC.,**

Plaintiff,

v.

B.O.P. PHARMACY, INC.,

Defendant.

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)
)
) **Civil Action No. 1:18-cv-03370-WFK-ST**
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)
) **JURY TRIAL DEMANDED**
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)

DECLARATION OF MARK BENN

Pursuant to 28 U.S.C. § 1746, I, MARK BENN, declare under penalty of perjury as follows:

1. I am over the age of eighteen and otherwise competent to make this declaration. Unless specifically indicated to the contrary, all statements in this declaration are based upon my personal knowledge.

2. I am employed by BioPlus Specialty Pharmacy Services, Inc. ("BioPlus") as its Regional Clinical Liaison. In this capacity, I make sales calls throughout the New York City Metropolitan area.

3. Beginning around late 2017, I began fielding inquiries from multiple providers and one potential provider in different locations about BioPlus' "Flushing location."

4. BioPlus does not have a "Flushing location."

5. I investigated these questions by visiting a pharmacy in Flushing that had the name "Bio Plus Pharmacy Inc." prominently featured on a red awning over its storefront. This first occurred on April 18, 2018. I spoke with the pharmacist on duty whose name was Eve. She acknowledged that the pharmacy regularly receives eRx prescriptions for specialty medications from prescribers in New York and other states that her pharmacy is unable to fill. I asked Eve to

inform me if these mistakes continued so I could make sure BioPlus' patients receive proper case. I gave Eve my business card and fax number.

6. I revisited the Flushing pharmacy on May 22, 2018, and met with Ms. Lu Yi, head pharmacist. Ms. Yi again acknowledged that her pharmacy regularly receives eRx prescriptions for patients from across the country which require specialty medications that her pharmacy is unable to fill. Ms. Yi agreed to transfer future misdirected eRx prescriptions to BioPlus via Amar Patel.

7. From my observation, the "Bio Plus Pharmacy" in Flushing appears in all respects to be a regionally based community pharmacy. The interior of its storefront has all earmarks of a small retail pharmacy with pharmacists working in the back. The front of the store was stocked with shelves of everyday items including over the counter medications and dietary supplements.

8. Attached to BioPlus' Motion for Preliminary Injunction as **Exhibit E** is a true and correct copy of a business card I picked up at the Flushing pharmacy that identifies Mr. Kenny Chan as a manager of "Bio Plus Pharmacy, Inc. and Surgical Supplies."

9. Attached to BioPlus' Motion for Preliminary Injunction as **Exhibit D** is a publicly available photograph of "Bio Plus Pharmacy, Inc." in Flushing. The photograph accurately depicts the outward appearance of the pharmacy when I last saw it in May of 2018.

10. To my knowledge, the Flushing pharmacy has not taken any measures to discontinue use of the "Bio Plus" trade name.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 2 day of July, 2018.



Mark Benn